

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
JANUARY 10, 2006

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
VICTORIA SELVA (arrived 8:00 P.M.)
DAWN SLOSSON

ABSENT: TONY POPOVSKI

ALSO PRESENT: LAWRENCE DLOSKI, TOWNSHIP ATTORNEY
JERRY SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Chairman FLORENCE stated that the Zoning Board of Appeals consists of a five (5) member body. In order to have a quorum there must be 3 members present. In addition, for a favorable vote all members present must vote unanimously. Lastly, if anyone desired to have their item tabled they may do so prior to the meeting.

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:07 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. Members POPOVSKI absent and SELVA arrived at 8:00 p.m..

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by GALLAGHER seconded by SLOSSON to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by GALLAGHER seconded by SLOSSON to approve the meeting minutes of November 29, 2005 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Russell Branham Permanent Parcel No. 08-05-127-039	Section 10.0704(B)(2)
(6) BP Gas Station Permanent Parcel No. 08-31-300-031	Section 10.2402(C)(6)
(7) Marcast Development Permanent Parcel No. 08-15-445-011 08-15-446-001	Section 10.0704(D)(1) 10.0704(D)(2)
(8) Romeo Plank Commons, LLC Permanent Parcel No. 08-06-200-049	Section 10.0347
(9) Lorenzo Garrisi Permanent Parcel No. 08-15-200-006	Section 10.0704(A)(3)(d)
(10) SignGraphix, Inc. Permanent Parcel No. 08-31-451-001 08-31-451-002	Section 10.1405(A)
(11) Peter DiNoto Permanent Parcel No. 08-17-426-002	Section 10.0504(A)
(12) Landus-JRG Acquisitions Permanent Parcel No. 08-32-476-012	Section 10.1706(D)

5. VARIANCE REQUEST FROM ZONING ORDINANCE;
Section 10.0704(B)(2)-Request to be allowed an increase in height of a structure from 25 feet to 26 feet 6 inches.
Located ¼ mile south of 26 Mile Road, east of Romeo Plank Road (16946 Shinnecock Drive); Section 5; Russell Branham, Petitioner. Permanent Parcel No. 08-05-127-039. (Tabled from November 8, 2005)

Chairman FLORENCE read a letter dated January 4, 2006 from the petitioner withdrawing the request as follows:

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“Variance request from provision of the zoning ordinance; Section 10.0704(B)(2)-Request to be allowed to increase a height of a structure from 25 to 26’6”. Location ¼ mile south of 26 Mile Road (16946 Shinnecock Drive); Section 5. Permanent Parcel No. 08-05-127-039.”

“Please withdraw this variance request.”

At the direction of the Township Attorney no action was taken.

6. VARIANCE REQUEST FROM ZONING ORDINANCE;
Section 10.2402(C)(6)-Requesting the extension of an approved site plan. Located on Northeast corner of Hall and Hayes Roads; Section 31; BP Gas Station, Petitioner. Permanent Parcel No. 08-31-300-031. (Tabled from November 8, 2005)

Chairman Florence read the findings and recommendations of January 5, 2006. They are as follows:

At its meeting of November 8, 2005, the Zoning Board of Appeals tabled this matter at the request of the petitioner.

In July, 2005, the petitioner requested that the Macomb Township Planning Commission grant an extension of a site plan approval for a car wash on the above described property from July 15, 2005 to July 15, 2006.

On August 16, 2005 the Planning Commission denied the extension. The petitioner is requesting that the Board of Appeals override the action of the Planning Commission to deny the extension of the site plan approval.

At its meeting of December 6, 2005, the Planning Commission discussed the matter and indicated that their denial was based upon the petitioner’s illegal use of the property for outdoor sale of merchandise without approval from the Planning Commission in accordance with the Special Land Use provisions of the Zoning Ordinance. The issue of the illegal use was concluded only 4 days prior to the petitioner’s request for the extension. The Commission felt that an extension could be construed as an approval for the illegal uses and, therefore, denied the request.

RECOMMENDATION:

It is recommended that the variance request to override the Planning Commission be denied for the following reasons:

1. Compliance with the strict letter of the requirement that a building permit must be

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issued within one-year of approval did not unreasonably prevent the owner from using the property as originally approved. Other commercial developments planned in Macomb Township are given a one-year approval period to commence construction, which is evidence that a one-year period is not unnecessarily burdensome. The original plan was approved July 15, 2003.

It is noted that the petitioner was given a one-year extension from July 15, 2004 to July 15, 2005.

2. The granting of an extension would give to the applicant an advantage or benefit not received by any other commercial developments in Macomb Township. The other owners are or will be required to comply with the one-year approval period. As a result the other property owners do not have the opportunity to make use of additional time.

There is nothing unusual about the parcel in question that sets it apart from other parcels in the area or in Macomb Township. There was nothing to prevent the construction during the approval period. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

Paul Valentino, representative, was in attendance and asked for a tabling of the item. He further indicated that at the November 8, 2005 meeting, he had requested copies of any documents or information provided to the board members. He noted that the documents read into the record tonight were never provided to him, nor was the information ever presented to the Planning Commission when they denied this matter. He noted that he has a copy of the meeting minutes. No such discussion ever took place, no report was ever written or presented to my client or myself that ever set forth any of the information that was just placed on the record. This is the first time we ever heard of the information and my client was never aware of any violation that was cited. Lastly, there is nothing within the site plan approval that deals with any outside storage.

Chairman FLORENCE stated that you are asking for a tabling.

Paul Valentino stated he was seeking a tabling of tonight's agenda item.

MOTION by FLORENCE seconded by GALLAGHER to table at the petitioner's request the variance request of Section 10.2402(C)(6)-Requesting the extension of an approved site plan; Located on the northeast corner of Hall Road and Hayes Road; Section 31; BP Gas Station, Petitioner. Permanent Parcel No. 08-31-300-031. The item has been tabled to March 14, 2006.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;

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Section 10.0704(D)(1)- Request to reduce the landscape wall setback from 55' to 3'.
Section 10.0704(D)(2)-Request to reduce the sideyard setback from 7.5' to 0'.
Located on West side of Card Road, 704.65' north of 23 Mile Road; Section 15;
Marcast Development, Petitioner. Permanent Parcel No. 08-15-445-011 and 08-15-
446-001. (Tabled from November 8, 2005)

Chairman FLORENCE read the findings and recommendations of January 5, 2006. They are as follows:

At its meeting of November 8, 2005, the Zoning Board of Appeals tabled this matter at the request of the petitioner.

The petitioner is requesting setback variances to allow the installation of the landscape wall and easements. The areas upon which the walls are planned are located on lots 1 and 99 on the northwest and southwest corner of Card and Castellana Drives. The walls are not planned within the established 20' landscape areas of the Castle Mar Subdivision. No site plans have been provided indicating how the walls would be constructed.

The Township Attorney, in a letter dated December 15, 2005, has advised that the developer of the Castle Mar Subdivision must apply for a variance of Section 17-140 of the Township Land Division Ordinance. The variance is first considered by the Planning Commission and a recommendation made to the Township Board of Trustees. This procedure will allow Township Departments to assess and report on how such a request may affect Township public utilities. The Zoning Board of Appeals decision should be subsequent to the determination by the Township Board in this regard.

RECOMMENDATION:

It is recommended that the variance request be tabled pending action by the Township Board as recommended by the Township Attorney and provided for in Sec. 17-140 of the Land Division Ordinance. The Zoning Board's deliberations in this matter will be enhanced by the findings and determinations made by both the Planning Commission and Township Board in this regard.

Simone Mauro, petitioner, was in attendance and indicated that these are not new walls. These walls are already existing and have been since approximately 2003. We have done everything accordingly. We had received Planning Commission approval, engineering approval and also the building permits for the walls. We were requested to add additional easements to the two lot areas where the signs exist, which was done. The walls do sit on an easement even though they are not in the original 20 foot easement that was required. We have recorded additional easements for the walls, and now at this point it does not meet some of the other ordinances that you have in place. Lastly, he questioned what the Township is requiring them to do.

Lawrence Dloski, Township Attorney, stated the problem was that when the walls were

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constructed they were constructed in a township utility easement. When the Township engineer discovered this, it was reported to the Township. Under the Township Land Division Ordinance, the landscaping easement can not be placed in a utility easement. That provision is there so that the landscaping easements don't have to be dug up or disturbed, in the event that underground utilities have to be maintained and or replaced. The first problem was that there was a violation of the Land Division Ordinance. When there is a violation of that ordinance, you are required to apply for a variance to the Planning Commission who conducts a public hearing, then makes a recommendation to the Township Board. If the Township Board grants the variance then the next step would be then to go back to the Zoning Board of Appeals for a setback variance for the walls.

Simone Mauro, petitioner, indicated that the 20 foot buffer easements always run coincident with water/sanitary sewer easements.

Lawrence Dloski, Township Attorney, stated that was not to occur.

MOTION by GALLAGHER seconded by SLOSSON to table at the petitioner's request the variance request of Section 10.0704(D)(1)-Request to reduce the landscape wall setback from 55' to 3' and Section 10.0704(D)(2)-Request to reduce the sideyard setback from 7.5' to 0'. Located on the west side of Card Road, 704.65' north of 23 Mile Road, Section 15; Marcast Development, Petitioner. Permanent Parcel No. 08-15-445-011 and 08-15-446-001. The item is tabled to March 14, 2006.

MOTION carried.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0347-Request to reduce the setback of a building that provides for door openings facing a residential area from 600 feet to 130 feet. Located on Southwest corner of 26 Mile and Romeo Plank Road; Section 6; Romeo Plank Commons, LLC, Petitioner. Permanent Parcel No. 08-06-200-049. (Tabled from November 8, 2005)

Chairman FLORENCE read the findings and recommendations of January 5, 2006. They are as follows:

At its meeting of November 8, 2005, the Zoning Board of Appeals tabled this matter.

The petitioner is requesting allowance to create a shopping center with doors facing a residential area that are closer than 600' which is prohibited by the zoning ordinance. Approximately one year ago, the Township amended the zoning ordinance to address the issue of the "megaphoning affect" of noise from commercial and industrial uses into residential areas. Late deliveries and daytime noise have a detrimental affect on the peace of adjoining residential properties. At that time it was felt that the distance and the required

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greenbelt could diminish the adverse affects of the adjoining incompatible land uses on the residential areas.

Since the time of the creation of the ordinance, other solutions have been considered that could eliminate or at least reduce the adverse affects of commercial/industrial noise for adjoining residents, such as the installation of plastic baffle strips hung from the top of the door frames to the floor so that the sounds from the interior of the building could not escape or be reduced significantly.

In a communication dated November 29, 2005, the petitioner indicated that hanging rubber strips inside of each man door would be installed to help eliminate noise being projected into the abutting residential neighborhoods. The petitioner's letter did not specifically refer to the 16 retail stores planned for the center. However, a phone conversation with the petitioner indicated that a second letter would be forthcoming indicating that it was the intention of the first letter to mean all man doors within the proposed center facing residential areas would be provided with the hanging rubber curtains. To date, that letter has not yet been received by the Clerk's Office.

RECOMMENDATION:

It is recommended that the petitioner's request to reduce the distance that opening doors will face a residential area from 600' to 130' be approved with the following conditions:

1. That hanging rubber strips be placed on each door within the center that faces a residential area in the center. The doors included are all man doors on the Kroger Store and/or all man doors in the balance of the 16 units planned to be constructed in Unit 2 adjacent to the Kroger Store, which is considered Unit 1.
2. That a communication be received from the petitioner noting said agreement and that said agreement will be properly recorded within the County Register of Deeds Office.

Mark McAlpine, representative, was in attendance and stated he was the one that the phone conversation occurred with. He further indicated he was satisfied with the recommendation as read.

Lawrence Dloski, Township Attorney, indicated that he did not feel that it would be necessary to include an agreement for recording at the Register of Deed Office since the requirements will be included within the Notice of Variance which gets recorded at the Register of Deeds Office. Lastly, if those requirements are not adhered to then a Certificate of Occupancy will not be granted.

Public Portion: None.

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MOTION by SLOSSON seconded by GALLAGHER to close the public portion.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.0347-Request to reduce the setback of a building that provides for door openings facing a residential area from 600 feet to 130 feet; Located on the southwest corner of 26 Mile Road and Romeo Plank Road; Section 6; Romeo Plank Commons, LLC, Petitioner. Permanent Parcel No. 08-06-200-049. The granting of the variance was conditioned upon the following standards:

- 1 That hanging rubber strips will be placed on each door within the center that faces a residential area in the center. The doors included all man doors on the Kroger Store and/or all man doors in the balance of the 16 units planned to be constructed in Unit 2 adjacent to the Kroger Store which is considered Unit 1.**
- 2. That a communication be received from the petitioner noting said agreement and that said agreement will be properly recorded within the County Register of Deeds Office.**
- 3. That no Certificate of Occupancy will be granted until such time as the rubber strips are installed.**

MOTION carried.

- 9. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary section: 10.0704A(3d) Request to allow a split to be created which provides for created parcels that would exceed the 3 to 1 ratio. Located on west side of Card Road, approx. 1778' south of 24 Mile Road on the west side of Card Road, approx. 1779' south of 24 Mile Road; Section 15; Lorenzo Garrisi, Petitioner. Permanent Parcel No. 08-15-200-006.

Chairman FLORENCE read the findings and recommendations of January 5, 2005. They

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are as follows:

The petitioner is requesting permission to vary the 3 to 1 provision of the residential ordinance. The purpose of the request is to provide for a parcel split with the ultimate goal of developing a portion of the property for single family residential purposes.

The split will create a non-conforming parcel.

Parcel A, if created, will be 7.658 acres in size and exceed the 3-1 ratio. Parcel B will be 2.350 acres in size and would meet the 3 to 1 provision of the ordinance.

RECOMMENDATION:

It is recommended that the variance request be approved for the following reasons:

The proposal of the petitioner is to develop the 7.658 acre parcel for single family purposes in accordance with the zoning ordinance and master plan.

This recommendation is made with the condition that the property will be developed for single family purposes in accordance with the zoning ordinance and that the agreement be recorded with the Macomb Register of Deeds Office.

The following letter of explanation was submitted by the petitioner dated November 17, 2005 as follows:

“We are requesting a variance from Section 10.0704(A)(3)(d) of the Macomb Township Zoning Ordinance No. 10 which requires that the depth to width ratio parcel in the R-1 zone not exceed 3:1.

“Mr. Baron wishes to sell a portion of his property while maintaining his existing residence and out buildings. Even if he wanted to sell the entire parcel, a depth to width variance would be required because the parcel currently exceeds the 3:1 ratio. Therefore, the need for variance is not created by the proposed splitting of the property. Strict enforcement of the ordinance would not allow Mr. Baron the right to sell off most of his property while maintaining his home.”

Jerome R. Schmeiser, Planning Consultant, gave a brief overview of the area and how the petitioner plans to tie into the surrounding properties.

Craig Duckwitz, representative, was in attendance.

Public Portion: None.

MOTION by SLOSSON seconded by GALLAGHER to close the public portion.

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MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.0704(A)(3)(d)-Request to allow a split to be created which provides for created parcels that would exceed the 3 to 1 ratio; Located on the west side of Card Road, approximately 1,778 feet south of 24 Mile Road; Section 15; Lorenzo Garrisi, Petitioner. Permanent Parcel No. 08-15-200-006. The granting of the variance was conditioned upon the following standards:

The proposal of the petitioner is to develop the 7.658 acre parcel for single family purposes in accordance with the Zoning Ordinance and Master Plan.

This recommendation is made with the condition that the property will be developed for single family purposes in accordance with the zoning ordinance and that the "Notice of Variance" be recorded with the Macomb Register of Deeds Office.

MOTION carried.

10. VARIANCE REQUEST FROM ZONING ORDINANCE;
Section 10.1405(I)(b)-Request to increase the size of signs from 32 sq ft to 67.22 sq ft for ground sign and 111.94, 111.94, and 50.55 sq ft for wall signs.
Located on Northeast corner of Hall Road and Tilch Road; Section 31; SignGraphix, Inc., Petitioner. Permanent Parcel No. 08-31-451-001 and 08-31-451-002.

Chairman FLORENCE read the findings and recommendations of January 5, 2006. They are as follows:

The petitioner is requesting variances to allow for increase size of signs for a 4 story medical facility (William Beaumont Hospital) located on the above described property.

RECOMMENDATION:

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It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the sign size requirements would not unreasonably prevent the owner from using the property as zoned. Other medical facility structures planned in Macomb Township will be required to comply with the same sign size requirements which is evidence that the proper sign size would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners of medical facility developments in Macomb Township. The other owners are or will be required to comply with the same sign size requirement.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the sign size requirement from being maintained. For example, there are no significant grade differences or natural features such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The following letter of explanation was submitted by the petitioner dated December 8, 2005 as follows:

“This medical complex consists of two (2) connected buildings; each building having a separate address and entrance. The size and quantity of signs allowed by the ordinance is not adequate to properly identify the facility or the individual entrances. The ‘state of mind’ of visitors to an ambulatory care facility is such that larger than normal signs are required. Additionally, the building setback combined with the wide roadway creates viewing distances that dictate larger signage than is required for a typical business.”

Bill Lutz, petitioner, was in attendance and presented a power point presentation on wayfinding and identification. He noted that the property in question sits out of the line of sight of most businesses in the area. Unfortunately, this is a multi-use facility which consists of a number of functions. It was noted that when health care visitors are on their way to an appointment they are pre-occupied and needs to be easy for the visitors to find their destination. The challenges which we are incurring are typically not found in retail signage. Our job is to get the customer off the road and into the facility. Finally, most ordinances written for signage don’t address signage for campuses.

Member GALLAGHER stated when he leaves his house he knows his destination and does not need signage to get him there.

Bill Lutz, petitioner, stated if the signs are removed off the building and left to a ground

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sign, the building will never be located. The medical field has become more mobile which means that patients may have to travel from one location to another for an appointment.

Member GALLAGHER stated that signage is nothing more than an ego boost for the owner of the building to have their name plastered all over and that it is not necessary.

Bill Lutz, representative, stated that it was very important to know where all the health care facilities are located.

Chairman FLORENCE stated the portion of the building that is visible from Hall Road is a four story facility, which makes it the largest thing in the entire stretch of Macomb County. He indicated that it, in itself, is a very large identification statement. Having a 32 square foot sign on a 4 story medical office building is not going to be a huge deal because the size of the building itself.

Bill Lutz, representative, stated the building is wonderful, but if you can't identify what it is the building lacks in serving its purpose. He noted there was nothing significant about the building that indicates it is a hospital.

Member SELVA arrived at 8:00 P.M.

Public Portion:

Judy Khadra, 16240 Meadows Court, a resident in Meadows at Lakeside, stated that she came to the meeting with opposition of the signage request, but after hearing the petitioner's presentation she would be in 100% agreement for the signage increase which will also help with the traffic flow pattern along Hall Road.

MOTION by SLOSSON seconded by GALLAGHER to close the public portion.

MOTION carried.

Member SELVA stated she was going to abstain from voting on this agenda item since she was absent for the first half of the conversation.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.1405(I)(b)-Request to increase the size of signs from 32 square feet to 67.22 square feet for ground sign and 111.94, 111.94 and 50.55 square feet for wall signs; Located on the northeast corner of Hall Road and Tilch Road; Section 31; SignGraphix, Petitioner. Permanent Parcel No. 08-31-451-001 and 08-31-451-002. The variance was denied since there was going to be a ground sign along Hall Road and identification signs on the building. Furthermore, it is noted that the petitioner

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has not demonstrated a practical difficulty for the granting of the variance.

MOTION carried.

11. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0504(A)-Request to allow a parcel of less width than required by the Zoning Ordinance.
Located on East side of Romeo Plank Road, approx. 3/4 mile north of 23 Mile Road;
Section 17; Peter DiNoto, Petitioner. Permanent Parcel No. 08-17-426-002.

Chairman FLORENCE read the findings and recommendations of January 5, 2006. They are as follows:

The petitioner is requesting permission to split a parcel fronting on Romeo Plank Road from the parent parcel which extends to the east approximately 1/4 mile. The proposed split will create a non-conforming parcel. The petitioner is also requesting a variance to allow the remaining portion of the split parcel to be 98.6' wide rather than 100' width as required by the Zoning Ordinance.

The surveys as submitted in connection with the application for the above described variances differ from the surveys as acted upon by the Township Assessor. Also, the drawings and surveys reviewed by the undersigned fixes the east property line for the subject parcel west of the Middle Branch of the Clinton River. The east line should be set along the centerline of the river rather than an arbitrary line west of the river. The centerline is used as the dividing line for other parcels south, along Romeo Plank, in the vicinity of 23 Mile Road.

RECOMMENDATION:

It is recommended that action to approve the variances be held in abeyance until such time as the surveys considered by the Assessor and those reviewed by the Board of Appeals are consistent and that the east property line is established as the centerline of the Middle Branch of the Clinton River. If the applicant has a basis for the line to be west of the river rather than the centerline, the ZBA should have an opportunity to consider those reasons following review and recommendations from the Township Assessor and Engineer.

Given that the surveys and drawings can be submitted that will be consistent it could be recommended that the requests be granted for the following reasons:

1. The use of the property for residential purposes will remain consistent with the Township Master Plan and Zoning Ordinance.
2. The land division does not change the 98.6' of frontage, before or after the split.

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3. The structures on the property meet the setback requirements of the zoning ordinance.

The frontage dimension of the parent parcel was fixed and not created by the petitioner. The following letter of explanation was submitted by the petitioner dated December 12, 2005 as follows:

“Romeo Plank Investors seeks to transfer property from Parcel No. 08-17-426-002 to its neighbor, Parcel # 08-17-402-003. As described on the attached sketch, Romeo Plank seeks to transfer the portion of Parcel No. 08-17-426-002 lying east of the Clinton River to its southern and northern neighbors, as part of a larger set of transactions in which property lying east of the Clinton River is being combined into one, large unit.

“Macomb Township Assessor, Phyllis Sharbo, refused to permit the transfer of property from Parcel No. 08-17-426-0032 to its neighbor in part because the remaining portion of Parcel No. 08-17-426-002 would fail to meet the 100 foot width requirement for parcels in the R-1-S zoning classification.

“A. The Township’s zoning ordinance allows the nonconformities to continue

“In its present state, Parcel No. 08-17-426-002 already fails to conform to two requirements of the R-1-S classification. The parcel is 98.6 feet wide, and therefore fails to conform to the 100 foot width requirement of Ordinance 10.0504.A. The parcel is also 1,691.95 feet deep, which gives it a depth to width ratio of 17:1, thereby failing to conform to the depth to width requirements of Ordinance 10.050.A. These nonconformities are vested, as Parcel No. 08-17-426-002 was lawfully in existence in its present configuration long before Macomb Township enacted the R-1-S zoning classification.

Ordinance 10.0309.C permits a nonconforming lot to continue as long as no structure on the nonconforming lot is built, modified, changed in use, or changed in location. Because none of these events is planned for the structure on Parcel No. 08-17-426-002, Macomb Township Ordinance 10.0309.C allows the nonconforming width and depth ratios to continue after Romeo Plank Investors’ proposed transaction. In fact, the newly configured Parcel No. 08-17-426-002 is more compatible with R-1-S zoning, as the nonconforming depth to width ratio will be reduced from 17:1 to 3.07:1.

“B. Practical impossibilities prevent Romeo Plank Investors from making the remainder comply with all aspects of R-1-S zoning.

“The pre-existing dimensions of Parcel No. 08-17-426-002 that impose practical difficulties and unnecessary hardships on Romeo Plank Investors in making the remaining property conforming to all aspects of R-1-S zoning after the transfer. From the date of its creation, Parcel No. 08-17-426-002 has been 98.6 feet wide. It is

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mathematically impossible to make a lot that is 98.6 feet wide comply with a minimum depth requirement of 300 feet and a depth to width ratio requirement of 3:1. This showing of mathematical impossibility meets the showing of hardship that is necessary for a variance.

“Granting Parcel No. 08-17-426-002 a variance from the 100 foot width and 3:1 depth to width requirements would not alter the essential character of the locality: Parcel No. 08-17-426-002 will still be used as a residential parcel. Indeed, because the dimensional variances are ones of only inches (17 inches in width), only an engineer with a surveyor’s tripod would be able to identify the nonconformities.

“Neither Romeo Plank Investors nor Robert and Bendetta Burkowski, nor Martha Sardelli created the hardship facing Parcel # 08-17-426-002. The parcel’s dimensions predate the 100 foot width and 3:1 depth to width requirements of R-1-S zoning as Parcel # 08-17-426-002 has been its size and shape since at least 1960.

“Denying Romeo Plank Investors the ability to transfer part of Parcel No. 08-17-426-002 to its neighbor because of these pre-existing dimensional nonconformities denies Romeo Plank Investors rights and privileges enjoyed by other, similarly situated property owners. Romeo Plank Investors is not aware of any other property owner in Macomb Township who is condemned to use an 11-acre parcel for one single-family residence for all of eternity because his lot is 17 inches shy of 100 feet wide. Thus, granting a variance from the 100-foot width and 3:1 depth to width requirements does not confer special privileges; it rectifies inequity.”

Ed Boucher, representative, was in attendance, and asked if a copy of the revised findings could be provided to him and his client for review. He also asked if a deferment could occur and be placed at the end of the last agenda item.

Lawrence Dloski, Township Attorney, stated there was one issue that could not be resolved at tonight’s meeting which was the issue of the drawing being submitted with the application having different dimensions from the Land/Split combination drawing submitted to the Assessor’s Office. The drawings have to be consistent.

Ed Boucher, representative, stated they recognized that and had corrected one issue that pertained to the right of way for the road and have worked with the property dimensions to get them as close as they could with the remaining parcel to the underlying zoning requirements. This is why we came up with the 3.071 depth to width ratio; that was as close to the ordinance as we could get.

Lawrence Dloski, Township Attorney, clarified that the dimensions on the drawings given to the Assessor are not the same as the ones submitted for tonight.

Deferment occurred and the Board went on to Item 12.

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12. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.1706(D)-Request to eliminate the 100' setback required where a business abuts property zoned residential.
Located on North side of Hall Road, 796' West of Romeo Plank Road; Section 32;
Landus-JRG Acquisitions Permanent Parcel No. 08-32-476-012.

Chairman FLORENCE read the findings and recommendations of January 5, 2006. They are as follows:

The petitioner is requesting the elimination of a 100' required setback along their north property line which abuts land zoned R-1. There currently exists on the property line a 6' high masonry wall and a 5' wide walkway. To the north of area in question there exists a "platted floodplain park area" with no apparent ability to develop for any other purpose. The nearest residence is approximately 1,000' from the north property line.

A review of the matter with the Township Engineer indicates that it is not the intention that the "platted floodplain park area" will be used for any other purpose.

RECOMMENDATION:

It is recommended that the variance request be approved since the "platted floodplain park area" provides the necessary buffer between the commercial development and the nearest residential structure.

Craig Duckwitz, representative, was in attendance.

Member SELVA questioned the ownership of the "platted floodplain park area" and the possibility of it being sold off.

Jerome R. Schmeiser, Planning Consultant, stated it belonged to the Plumgrove Homeowners' Association.

Lawrence Dloski, Township Attorney, stated it was initially platted as part of the subdivision as a retention basin to service the subdivision, but when the stormwater lines were put in they weren't required to utilize it. Lastly, he stated his office had been directed by the Township Supervisor to look at the legality of the Township using that property for another use. He concluded that it would be a very cumbersome procedure in order to use that property for something else other than what it is platted for.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

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MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.1706(D)-Request to eliminate the 100' setback required where a business abuts property zoned residential; Located on the north side of Hall Road, 796' west of Romeo Plank Road; Section 32; Landus-JRG Acquisitions, Petitioner. Permanent Parcel No. 08-32-476-012. The variance was granted since the spirit and intent of the Zoning Ordinance is still being maintained. There is a proper buffer between commercial and residential property.

MOTION carried.

Item 11 was reconsidered at 8:17 P.M.

Chairman FLORENCE asked if there was anything they would like to add to the discussion.

Ed Boucher, representative, stated he thought it might be helpful to take the discussion up through the public comments section and hear the comments of the Board after we explain the issue we are faced with concerning this property and the complete set of transactions that are associated with it.

Lawrence Dloski, Township Attorney, stated the recommendation indicates that there are several issues with the petition. He asked if the petitioner could address those issues.

Ed Boucher, stated they certainly could.

Lawrence Dloski, Township Attorney, asked if the first issue regarding the discrepancy in the legal description in the surveys provided to the Assessor and what was given in the ZBA Board packet with regard to the dimensional discrepancies could be addressed.

Ed Boucher, representative, stated those were very ministerial issues that are very easily

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addressed.

Lawrence Dloski, Township Attorney, asked which survey was correct: the Assessor's survey or the survey that the Zoning Board of Appeals has in their packet.

Ed Boucher, representative, stated he has not seen the Assessor's survey so he could not speak to the issue.

Lawrence Dloski, Township Attorney, stated the Board needs to have those issues resolved in order to act on your request. The recommendation is that it could probably be approved but these issues have to be resolved. Mr. Dloski asked how the petitioner proposes to resolve them.

Pete DiNoto, petitioner, stated that if it was tabled tonight could it be resubmitted? We would be happy to sit down with Mr. Schmeiser and determine where he wants to split it.

Lawrence Dloski, Township Attorney, stated that would probably be a good idea to table the request so you can look at the surveys that were given to the Assessor and look at the surveys that the Zoning Board of Appeals has in their packet and prepare one to resubmit to the ZBA and for the Assessor that match.

Pete DiNoto, petitioner, stated the issue is they were changed from what was originally submitted. It is changed because we can not comply with the 3 to 1 depth and we can not comply with R-1-S zoning minimum of 300 feet. The property is 98.6 feet wide, not 100 feet wide. So we don't comply there. That's why we changed this: to create the least amount of variances needed. It is just an issue with sitting down with Mr. Schmeiser and agreeing it should be split here. We don't have a problem where we split it on the river. The issue is we would like to split it and combine it, like we've been trying to do from the beginning. So if you are saying it's not an issue, we are happy to table it and were happy to come in and talk to Mr. Schmeiser. Were happy to get them all split and combined and do what's reasonable.

Lawrence Dloski, Township Attorney, stated with regard to this particular request, I think that is probably a good thing to do. I'm sure Mr. Schmieser will agree to sit down with you and go through this to get it in a shape that when it comes back to the Board, the Board can act on it.

Jerome R. Schmieser, Planning Consultant, stated that comments from the Assessor and engineer would be needed.

Lawrence Dloski, Township Attorney, stated you can sit down and go through it.

Chairman FLORENCE asked the petitioner if that was their request to table the item to

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continue discussion on the drawings.

Pete DiNoto, petitioner, asked if the original comments from Mr. Schmeiser that had been faxed over to his office were off the table.

Lawrence Dloski, Township Attorney, stated there has been a revised recommendation and that is the recommendation that the Zoning Board of Appeals is working under.

Pete DiNoto, petitioner, stated if the issue was just where the line needs to be, it's not an issue. We can put that wherever you want.

Ed Boucher, representative, stated he would like to table this matter and will be in contact to set up a meeting.

MOTION by GALLAGHER seconded by SLOSSON to table at the petitioner's request the variance of Section 10.0504(A)-Request to allow a parcel with less width than required by the Zoning Ordinance; Located on the east side of Romeo Plank Road, approximately $\frac{3}{4}$ mile north of 23 Mile Road; Section 17; Peter DiNoto, Petitioner. Permanent Parcel No. 08-17-426-002. The item is tabled to March 14, 2006.

MOTION carried.

13. OLD BUSINESS

None.

14. NEW BUSINESS

None.

15. PLANNING CONSULTANTS COMMENTS

None.

16. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA.

MOTION by GALLAGHER seconded by SLOSSON to receive and file all correspondence.

MOTION carried.

ADJOURNMENT

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MOTION by SLOSSON seconded by SELVA to adjourn the meeting at 8:23 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK